

1 P. 22(b) .

2 The court determines whether to issue or deny a COA pursuant to
3 standards established in *Miller-El v. Cockrell*, 537 U.S. 322 (2003);
4 *Slack v. McDaniel*, 529 U.S. 473 (2000); and 28 U.S.C. § 2253(c).
5 Ordinarily, a COA may be issued only where the petitioner has made
6 a "substantial showing of the denial of a constitutional right." 28
7 U.S.C. § 2253 (c) (2); *Miller-El*, 537 U.S. at 330. Where, as here, the
8 district court denies a habeas petition on procedural grounds,
9 without reaching the prisoner's underlying constitutional claim, a
10 COA should issue when the prisoner shows, at least, that jurists of
11 reason would find it debatable whether the petition states a valid
12 claim of the denial of a constitutional right and that jurists of
13 reason would find it debatable whether the district court was correct
14 in its procedural ruling. *Slack*, 529 U.S. at 484, *See also Miller-*
15 *El*, 537 U.S. at 338.

16 In *Silva v. Woodford*, 279 F.3d 825, 832-33 (9th Cir. 2002), the
17 court noted that this amounts to a "modest standard". (Quoting
18 *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)). Indeed,
19 the standard for granting a COA has been characterized as
20 "relatively low". *Beardlee v. Brown*, 393 F.3d 899, 901 (9th Cir.
21 2004). A COA should issue when the claims presented are "adequate
22 to deserve encouragement to proceed further." *Slack*, 529 U.S. at
23 483-84, (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); *see*
24 *also Silva*, 279 F.3d at 833. If reasonable jurists could "debate"
25 whether the petition could be resolved in a different manner, then
26 the COA should issue. *Miller-El*, 537 U.S. at 330.

27 Under this standard of review, a COA will be denied. In
28 dismissing this petition for writ of habeas corpus, this Court found

1 that the petition was challenging the same conviction and sentence
2 which was the subject of an earlier petition that was denied on the
3 merits. Petitioner cannot make a colorable claim that jurists of
4 reason would find debatable or wrong the decision dismissing the
5 petition as successive.

6 Therefore, pursuant to 28 U.S.C. § 2253, the Court DENIES a
7 certificate of appealability.

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9 Dated: July 22, 2011

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J. Spencer Letts
United States District Judge

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15 Presented By:

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Marc L. Goldman
United States Magistrate Judge